

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DENNIS TALLMAN,

Plaintiff(s),

v.

CPS SECURITY (USA), INC., et al.,

Defendant(s).

Case No. 2:09-CV-944 JCM (PAL)

ORDER

Presently before the court is plaintiff Dennis Tallman's unopposed motion for entry of an additional judgment. (ECF Nos. 284, 288).

On September 8, 2016, the Ninth Circuit clerk amended the court's mandate, ordering that plaintiff's unopposed motion for an award of attorney's fees and expenses on appeal in the amount of \$36,560 be granted. (App. Docket No. 42). Plaintiff's counsel, Leon Greenberg, states that he attempted to contact defendants' counsel and had reason to believe that the matter of payment would be resolved. (*Id.* at 284 at 2–3). However, over a month and a half has elapsed since Greenberg commenced these communications, and there has been no indication to the court that defendants have complied with the Ninth Circuit's order. (*Id.*).

Plaintiff on November 17, 2016, submitted a notice of non-opposition to this court. (ECF No. 288). Plaintiff argues therein that defendants have failed to comply with the Federal Rules of Civil Procedure and this court's Local Rules of Practice. This court concurs that there has been no response from defendants within the deadlines promulgated by Local Rule 7-2. (*Id.*).

Title 29 U.S.C. § 216(b) authorizes a court to "allow a reasonable attorney's fee to be paid by the defendant . . . ." Additionally, a "party seeking an award of fees must submit evidence supporting the hours worked and the rates claimed." *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000). Although Local Rule 7-2(d) may be procedurally dispositive, this court, in fairness, will nevertheless examine the merits of this motion,

1 Plaintiff's counsel declares under penalty of perjury that he has spent an hour generating  
2 the present motion and communicating with defendants' counsel. (ECF No. 284). Greenberg  
3 requests that an hourly rate of \$720 be applied to this time and that the product be added to the  
4 sum granted in the Ninth Circuit's order. (ECF No. 284). The total pecuniary sum requested by  
5 plaintiff in this motion for additional judgment is therefore \$37,280. (*Id.*).

6 Plaintiff's underlying motion for attorney fees was granted by a Ninth Circuit clerk's order  
7 regarding an unopposed motion for an award of attorney's fees and expenses on appeal. (App.  
8 Docket No. 42). Defendants have failed to contest plaintiff's calculation of the appropriate fee in  
9 either that motion or the present one. (*See id.*; ECF No. 284). Upon review of the record and the  
10 affirmation of plaintiff's counsel, this court does not believe that it should deviate from the fee rate  
11 permitted by the Ninth Circuit order. (App. Docket No. 42). Furthermore, one hour appears to be  
12 a reasonable calculation of the time required by plaintiff's counsel to draft the present motion and  
13 attempt to contact defendants' counsel by email and phone. (*See* ECF No. 284); *see also* 29 U.S.C.  
§ 216(b).

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff Dennis  
16 Tallman's motion for entry of an additional judgment, (ECF No. 284) be, and the same hereby is,  
17 GRANTED.

18 DATED November 29, 2016.

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UNITED STATES DISTRICT JUDGE